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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,880	07/03/2001	Thomas James Klofta	8622	2203

27752 7590 08/06/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/06/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,880

Applicant(s)

KLOFTA ET AL.

Examiner

Konata M. George

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-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claims 1-25 are pending in this application.

Action Summary

1. The rejection of claims 20-25 under 35 U.S.C. 103(a) over Roe in view of Wenninger et al. is being maintained for the reasons stated in previous office actions see below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,609,587) in view of Wenninger et al. (*Int. Cos. Incred. Dict. and Hand. 1997*).

Roe discloses a diaper having a lotioned topsheet comprising a liquid polyol polyester emollient and an immobilizing agent. The disposable absorbent article of the prior art can be sanitary napkins, panty-liners, diapers, incontinence briefs, etc. (col. 4, lines 34-37). The lotion composition comprises (1) a liquid polyol polyester emollient; (2) an immobilizing agent(s) for the liquid polyol polyester emollient; (3) optionally a hydrophilic surfactant; and (4) other optional components (col. 10, lines 38-42). The skin-conditioning agent of the claimed invention is the polyol polyester of the prior art (col. 10, lines 56-67 to col. 15, lines 1-20). The viscosity agent of the claimed invention

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is the immobilizing agent (i.e. C₁₂-C₂₂ fatty acids) (col. 18, lines 45-62) or waxes (col. 21, lines 18-25). Within the optional components we find vitamins, skin soothing agents (i.e. applicants claimed skin care ingredients) and film-forming agents (col. 23, lines 27-44). Column 15, lines 49-64 describe that petroleum-based emollients can be employed in the composition. The prior art does not teach the specific film-forming agents as claimed.

Wenninger discloses in Volume 1 pages 26-27 the use of acrylates copolymers as film formers. It is also taught in volume 2, pages 1067-1068 the use of polyethylene as a film-forming agent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the acrylates copolymers and polyethylene of Wenninger in the invention of Roe. Column 23, lines 41-44, state "all of these materials are well known in the art as additives for such formulations and can be employed in appropriate amounts in the lotion compositions of the present invention." Thus it is obvious to combine.

Response to Arguments

3. Applicant's arguments filed July 2, 2003 have been fully considered but they are not persuasive.

Applicants argue that the prior art reference of Roe does not teach the film forming agents as claimed by the applicant. Applicants argue that the reference to film former in the prior art reference is as an optional component. Applicants argue that

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Wenninger does not teach or suggest the use of the film-forming agents in any particular amount or type of composition. It is the position of the examiner that although the prior art reference teach film formers as an optional component and as the applicant states it may comprise 0 wt% of the composition, it can also mean that it contains at least 1% wt of the composition. With respect to the specific film forming agents as claimed by applicant, it is the position of the examiner that the disclosure of film formers is directed to a broad category and that all compounds that are film formers fall within its scope. With respect to the Wenninger reference, Wenninger is being used to teach different types of film-formers or film-forming agents that are commonly used in the field of cosmetics, while it doesn't teach the specific concentrations, those determinations are within one of ordinary skill in the art to determine depending on the use of the film-formers or film-forming agents.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

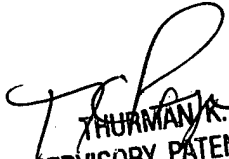
Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
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